

## **Public Access on Beaches and Shorelines**

- The public has a right of access to and along all beaches and shorelines in the State situated below the "upper reaches of the wash of the waves." HRS Secs. 115-4 & 115-5.
- Generally, the Counties have the primary authority and duty to develop and maintain public access to and along the shorelines. HRS Secs. 46-6.5, 115-5 & 115-7.
- The State's primary role in the shoreline area is to preserve and protect coastal resources within the conservation district and support public access along and below the shoreline. HRS Chap. 205A.
- In limited circumstances, the State, under its Na Ala Hele Program, is responsible for management and maintenance of public rights-of-way that are part of the Na Ala Hele trail system of "ancient trails" that are identified and established public trails with documented historical use and significance. Unlike other public rights-of-ways that may exist by virtue of an easement, the Na Ala Hele trails are owned by the State and may lead to and from the shoreline and also provide lateral access along shorelines. HRS Sec. 264-1.
- An inventory of public rights-of-ways should be available at the respective County planning offices and a list of Na Ala Hele trails are available at DLNR's Na Ala Hele Division.
- Members of the public seeking the establishment or enforcement of public beach access should seek the assistance of the appropriate County agencies tasked with that responsibility.
- The State, and DLNR in particular, has been eagerly supportive of County efforts to establish and maintain public access.
- If private homeowners are obstructing existing public rights-of-way to the shoreline, HRS Sec. 115-9 provides a remedy and up to a \$2000 penalty for that kind of situation.

**§115-2 Acquisition of lands for public rights-of-way and public transit corridors.** When the provisions of section 46-6.5 are not applicable, the various counties shall purchase land for public rights-of-way to the shorelines, the sea, and inland recreational areas, and for public transit corridors where topography is such that safe transit does not exist. [L 1974, c 244, §2; am L 1977, c 164, §4]

**[§115-3] Criteria for public rights-of-way.** A distance at reasonable intervals taking into consideration the topography and physical characteristics of the land the public is desirous of reaching is established as the maximum between public rights-of-way for the purposes of this chapter. [L 1974, c 244, §3]

**§115-4 Right of transit along shorelines.** The right of access to Hawaii's shorelines includes the right of transit along the shorelines. [L 1974, c 244, §4; am L 1991, c 37, §2]

**[§115-5] Transit area and public transit corridor defined.** The right of transit along the shoreline exists below the private property line which is defined as being along the upper reaches of the wash of waves, usually evidenced by the edge of vegetation or by the debris left by the wash of waves. However, in areas of cliffs or areas where the nature of the topography is such that there is no reasonably safe transit for the public along the shoreline below the private property lines, the counties by condemnation shall establish along the makai boundaries of the property lines public transit corridors which shall be not less than six feet wide. [L 1974, c 244, §5]

**[§115-7] State and county co-sponsorship of programs.** The department of land and natural resources shall enter into agreements with the council of any county providing for the acquisition of public rights-of-way and public transit corridors pursuant to this chapter; provided that the county shall match the funds which have been appropriated by the legislature. The development and maintenance of the rights-of-way and public transit corridors shall be the responsibility of the county. [L 1974, c 244, §7]

**[§115-9] Obstructing access to public property; penalty.** (a) A person commits the offense of obstructing access to public property if the person, by action or by having installed a physical impediment, intentionally prevents a member of the public from traversing:

- (1) A public right-of-way;
- (2) A transit area; or
- (3) A public transit corridor;

and thereby obstructs access to the sea, the shoreline, or any inland public recreational area.

(b) Physical impediments that may prevent traversing include but are not limited to the following:

- (1) Gates;
- (2) Fences;
- (3) Walls;
- (4) Constructed barriers;
- (5) Rubbish;
- (6) Security guards; and
- (7) Guard dogs or animals.

(c) Obstructing access to public property is a misdemeanor.

(d) Minimum fines for violation under this section shall be as follows:

- (1) \$1,000 for a second conviction; and
- (2) \$2,000 for any conviction after a second conviction.

(e) As used in this section:

"Person" means a natural person or a legal entity.

"Public recreational area" means public lands or bodies of water opened to the public for recreational use.

[L 2004, c 169, §2]

**[§46-6.5] Public access.** (a) Each county shall adopt ordinances which shall require a subdivider or developer, as a condition precedent to final approval of a subdivision, in cases where public access is not already provided, to dedicate land for public access by right-of-way or easement for pedestrian travel from a public highway or public streets to the land below the high-water mark on any coastal shoreline, and to dedicate land for public access by right of way from a public highway to areas in the mountains where there are existing facilities for hiking, hunting, fruit-picking, ti-leaf sliding, and other recreational purposes, and where there are existing mountain trails.

(b) These ordinances shall be adopted within one year of May 22, 1973.

(c) Upon the dedication of land for a right-of-way, as required by this section and acceptance by the county, the county concerned shall thereafter assume the cost of improvements for and the maintenance of the right-of-way, and the subdivider shall accordingly be relieved from such costs.

(d) For the purposes of this section, "subdivision" means any land which is divided or is proposed to be divided for the purpose of disposition into six or more lots, parcels, units, or interests and also includes any land whether contiguous or not, if six or more lots are offered as part of a common promotional plan of advertising and sale.

(e) The right-of-way shall be clearly designated on the final map of the subdivision or development.

(f) This section shall apply to the plan of any subdivision or development which has not been approved by the respective counties prior to July 1, 1973. [L 1973, c 143, §2]